

DEPARTMENT OF PUBLIC HEALTH
AND HUMAN SERVICES

CHAPTER 75

CHILD AND ADULT FOOD CARE PROGRAM

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Subchapter 1

General

37.75.101 DEFINITIONS For purposes of this chapter, the following definitions apply:

(1) "Active recruitment" means direct contact, initiated by a day care home sponsor, with a provider that is currently participating in the Child and Adult Care Food Program (CACFP), for the purpose of enticing the provider to enroll with or switch to a different sponsor. Examples of such direct contact considered to be active recruitment include but are not limited to a contact made in person, by phone call, through email, by fax, and through a mailing or through a newsletter that is invitational in content disseminated by a sponsor to one or more providers that it does not sponsor.

(2) "Adult day care center" means an adult day care center as defined in 7 CFR 226.2.

(3) "Advanced payment" means funds made available to an institution for its CACFP costs prior to the month in which such costs will be incurred.

(4) "Adverse action" means an action taken by the state CACFP in the administration of the CACFP having a negative impact on an institution.

(5) "Announced review" means an on site review that occurs after forewarning.

(6) "Authorized capacity" means the number of children that a licensed or approved child care center or registered day care home is able to have in care at any one time including overlap.

(7) "CACFP" means the Child and Adult Care Food Program as designated in section 17 of the National School Lunch Act as amended (codified at 42 USC 1766).

(8) "Center" means a child care center, an adult day care center, or an outside school hours care center. "Center" may also mean an emergency shelter, special after school snacks center, Head Start center, or proprietary center that enters into an agreement with the department to administer the CACFP in a specific area for a specific period of time.

(9) "Child care center" means any public or private nonprofit organization, or any proprietary center, licensed or approved to provide nonresidential child care services to enrolled children, primarily of preschool age, including but not limited to day care centers, settlement houses, neighborhood centers, Head Start centers, and organizations providing day care services for children with disabilities. Child care centers may participate in the CACFP as independent centers or under the auspices of a sponsor.

(10) "Combination food" means an entree with more than one CACFP required food component included in its ingredients.

(11) "Corrective action plan" means a plan indicating the actions to be taken by an institution or provider entity for the purpose of correcting a deficiency or addressing a problem.

(12) "Day care home" or "DCH" means a family or group day care home as those terms are defined in 52-2-703, MCA, and is an organized nonresidential child care program for children enrolled in a private home registered or approved as a family or group day care home, and participating in the CACFP through a sponsor.

(13) "Department" means the Department of Public Health and Human Services.

(14) "Elementary school" means any school serving children in grades K through 8.

(15) "Emergency shelter" means a public or private nonprofit organization whose primary purpose is to provide temporary shelter and food services to homeless families with children.

(16) "Institution" means a sponsor or child care center which enters into an agreement with the department to assume final administrative and financial responsibility for CACFP operations.

(17) "Licensing staff" means department personnel who enforce state laws and rules for the purpose of registering, licensing, and regulation of child care.

(18) "Outside school hours care center" has the meaning cited in 7 CFR 226.2.

(19) "Processed meats", for purposes of the CACFP, means hot dogs, salami, sausage, and food of this type, but does not include ground meats such as hamburger or cured meat such as ham.

(20) "Program" means the Child and Adult Care Food Program.

(21) "Proprietary center" means a qualifying child care center participating in the CACFP as a for-profit center that is:

(a) a proprietary Title XIX or Title XX center with at least 25% of enrolled or authorized capacity, whichever is less, that is paid from a state pooled funding source which includes federal Title XX funds; or

(b) a free and reduced price center with at least 25% of its enrollment or authorized capacity, whichever is less, that is in the free and reduced price reimbursement category.

(22) "Provider" means a person providing care in a family or group day care home.

(23) "School attendance area" means the specific geographical area whose student population is served by a specific elementary school.

(24) "Seriously deficient" means the status of an institution, center, or a day care home that has been determined to be seriously noncompliant in one or more aspects of its operation of the CACFP.

(25) "Sponsor" means an organization under contract with the department that assumes final administrative and financial responsibility for CACFP operations for facilities under its jurisdiction and meets the definition of sponsoring organization in 7 CFR 226.2, the federal definitions pertaining to CACFP.

(26) "Tiering" means categorizing the reimbursement rate for day care homes based on school designation, census block numbering area, and established criteria for income standards.

(27) "Title XIX" means Title XIX of the Federal Social Security Act.

(28) "Title XX" means Title XX of the Federal Social Security Act.

(29) "USDA" means the United States Department of Agriculture. (History: 52-2-704, MCA; IMP, 52-2-702, 52-2-704, MCA; NEW, 2003 MAR p. 981, Eff. 5/9/03; AMD, 2004 MAR p. 577, Eff. 3/12/04; AMD, 2006 MAR p. 331, Eff. 2/10/06.)

37.75.102 CIVIL RIGHTS (1) The CACFP is a federal program and all participants must comply with Title VI of the Civil Rights Act of 1964. The full description of participant responsibilities is set forth in the civil rights section of the CACFP Manual, and is adopted and incorporated by this reference. A copy of the CACFP Manual's civil rights section is available from the Department of Public Health and Human Services, Human and Community Services Division, 111 N. Jackson, P.O. Box 202925, Helena, MT 59620-2925.

(2) The federal CACFP requires the inclusion of the USDA nondiscrimination and equal opportunity statements as set forth in (2)(a) to be used in all informational materials disseminated to the public.

(a) "In accordance with federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability.

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue SW, Washington, DC 20250-9410, or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer. "

(3) If the material is too small to permit the full statement to be included (e.g., brochures, coupons, electronic benefit cards, flyers, and other media of less than a page) the material must, at a minimum, include USDA's short nondiscrimination statement, as follows: "THIS INSTITUTION IS AN EQUAL OPPORTUNITY PROVIDER AND EMPLOYER." (History: 52-2-704, MCA; IMP, 52-2-702, 52-2-704, MCA; NEW, 2003 MAR p. 981, Eff. 5/9/03; AMD, 2006 MAR p. 331, Eff. 2/10/06.)

37.75.103 CHILD AND ADULT CARE FOOD PROGRAM (CACFP):
FEDERAL REGULATIONS ADOPTED BY REFERENCE (1) The CACFP shall be administered in accordance with the requirements of federal law governing the Child and Adult Care Food Program as set forth in Title 7 CFR part 226 (2005), which regulates all state child and adult care food programs. Title 7 CFR part 226 (2005) is adopted and incorporated as a part of these rules. A copy may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, Child and Adult Care Food Program, P.O. Box 202925, 111 North Jackson Street, Fifth Floor, Helena, MT 59620-2925 or through the federal government website access at www.gpoaccess.gov/cfr/index.html. (History: 52-2-704, MCA; IMP, 52-2-702, 52-2-704, MCA; NEW, 2006 MAR p. 331, Eff. 2/10/06.)

Rule 37.75.104 reserved

37.75.105 HEAD START CATEGORICAL ELIGIBILITY (1) A Head Start institution that serves children whose families do not meet the low income criteria of Head Start for eligibility must use the Montana CACFP income eligibility form and income guidelines to determine the free, reduced, or paid reimbursement category for any such children.

(2) For CACFP documentation and eligibility purposes, the Head Start organization must maintain a list of Head Start participants eligible for free meal reimbursement. The list must include a statement certifying that the participant is enrolled in Head Start on the basis of Head Start income eligibility. This list must be signed each month by a head start official authorized to act on behalf of Head Start and must be retained on site and be readily available, or must be made available during the time of a review. (History: 52-2-704, MCA; IMP, 52-2-702, 52-2-704, MCA; NEW, 2003 MAR p. 981, Eff. 5/9/03; AMD, 2006 MAR p. 331, Eff. 2/10/06.)

Rules 37.75.106 and 37.75.107 reserved

37.75.108 ADVANCES (1) The department may, in its discretion, advance a payment. The amount of any advance payment will be based on the historical payment data for the specific institution. Any and all advance payments must be repaid to the department prior to the beginning of the next fiscal year. (History: 52-2-704, MCA; IMP, 52-2-702, 52-2-704, MCA; NEW, 2003 MAR p. 981, Eff. 5/9/03; AMD, 2006 MAR p. 331, Eff. 2/10/06.)

37.75.109 AUDIT GRANTS (1) An institution may be eligible to receive a grant from the department for the purpose of reimbursing the institution for all or part of the CACFP portion of an audit. To qualify for a grant, an institution must meet the following minimum requirements:

(a) An audit must be a condition for participation or continued participation in the CACFP.

(b) The professional services of the auditor or auditors must be performed in accordance with all applicable state and federal laws, regulations, and policies relating to procurement of professional services.

(c) Prior to beginning an audit, the institution must submit to the department for approval:

(i) a completed request for reimbursement of audit expenses;

(ii) a signed copy of the audit proposal, including the proposed audit cost, the resume of the on site auditor or auditors, and certification that the audit will include tests of the CACFP in accordance with the current federal Office of Management and Budget (OMB) circular A-133 and the USDA OMB supplement for the Catalog of Federal Domestic Assistance (CFDA) 10.558, Child and Adult Care Food Program, dated March 2002; and

(iii) evidence the supervising auditor is a certified public accountant.

(d) Prior to beginning the audit, the institution must:

(i) provide a copy of the current state CACFP audit policy to the auditor engaged to perform the audit; and

(ii) obtain written approval for the audit from the department.

(e) The audit must be completed no later than nine months after the end of the fiscal year being audited.

(2) If an audit grant is awarded, the institution must submit to the department within 30 days following completion of the audit:

(a) two copies of the audit (including management letters referenced in the audit report);

(b) a copy of the final invoice from the auditor, documenting the cost of an OMB circular A-133 audit;

(c) a time log documenting actual direct costs of auditing the program; and

(d) an invoice on the institution's letterhead requesting reimbursement of the CACFP portion of the audit expense.

. (3) The department may authorize a grant for up to the actual direct cost of auditing the program. (History: 52-2-704, MCA; IMP, 52-2-702, 52-2-704, MCA; NEW, 2003 MAR p. 981, Eff. 5/9/03; AMD, 2006 MAR p. 331, Eff. 2/10/06.)

Subchapter 2

Sponsors

37.75.201 DAY CARE HOME SPONSORS SERVICE AREAS (1) The Montana CACFP sets geographical boundaries of operation for sponsors. Boundaries are set based on financial viability and need for services. Geographical boundaries follow county lines.

(2) In any area of the state where at least two day care home sponsors are currently available to all program participants, additional sponsor applications will not be accepted.

(3) If a provider would be more efficiently served by a sponsor in an adjacent service area, the service areas may be adjusted if this arrangement is by mutual consent between the affected sponsors, and prior written approval is obtained from the department after the department confirms that the provider would be more efficiently served by the adjacent service area sponsor.

(4) A prospective new sponsor must demonstrate to the department the need for the services to be provided by submitting a list of registered and operating day care home providers who are not presently served by a sponsor in the proposed geographical area. The department will then determine whether the existing sponsors are capable of providing CACFP services to the new providers on the list.

(5) An institution interested in becoming a day care home sponsor must be either a governmental or private nonprofit organization.

(6) Prior to completing an application, preliminary documentation must be submitted to and approved by the Montana CACFP that includes:

(a) a written request to become a sponsor with the name, physical address, and telephone number of the organization;

(b) articles of incorporation as a tax-exempt organization, in accordance with state law;

(c) documentation from the internal revenue service that the organization is a private nonprofit corporation, tax-exempt under the Internal Revenue Code of 1986;

(d) a statement that the institution has a board of directors;

(e) an organizational flowchart stating which personnel will administer the CACFP;

(f) certification that neither the organization nor any of its principals have ever been disqualified from participation in any publicly funded program or been convicted in the last seven years of any activity that indicated a lack of business integrity, including, but not limited to, fraud, embezzlement, theft, forgery, or bribery;

(g) documentation of financial viability that demonstrates the ability to withstand temporary interruptions in program payments and pay expenses that are not funded through the CACFP;

(h) documentation of administrative capability that reflects adequate staff to operate and administer the program, including the supervision and monitoring of participating facilities; and

(i) documentation of program accountability that includes financial management, recordkeeping, claim processing, and training systems that will be used.

(7) The application to become a new sponsor must include the following:

(a) written acknowledgment of receipt of the criteria for sponsors;

(b) a written sponsor proposal; and

(c) an oral presentation.

(8) A prospective sponsor must complete the written proposal, orientation training, oral presentation, and Montana CACFP training and be approved for each requirement before the institution will be allowed to become a sponsor.

(9) In the event that a sponsor discontinues or is terminated and disqualified from participation in the CACFP, the department may facilitate moving providers to existing sponsors that are able to demonstrate the capability to serve the providers of the discontinuing or terminated sponsor. The department will notify all providers and sponsors in the event that a sponsor discontinues or is terminated from CACFP participation. If the department determines that the existing sponsors in a service area are unable to serve the providers, the department may facilitate moving providers to existing sponsors outside of the existing sponsor's service area.

(History: 52-2-704, MCA; IMP, 52-2-702, 52-2-704, MCA; NEW, 2003 MAR p. 981, Eff. 5/9/03; AMD, 2006 MAR p. 331, Eff. 2/10/06.)

37.75.202 TIERING CHANGES (1) A sponsor may only claim meals for purposes of reimbursement for its sponsored day care homes once per month for any one tier category.

(2) A change in tier status resulting from new data, such as census, income information, or elementary school information distributed to sponsors for use in evaluating tier status, is effective statewide the first day of the month during which the income information, census, or elementary school information is available to the sponsor.

(3) A day care home may submit a request for a tier change evaluation to its sponsor. If approved, the change will be effective as noted below:

(a) changes based on elementary school attendance area or census block are effective on the first of the month during which the evaluation request is received, except as provided in (3)(c);

(b) changes based on income fluctuations or relocation of the provider are effective on the first day of the month that the evaluation request is documented and verified; and

(c) a change made as a result of an investigation or to correct a tiering error will be retroactive to the date of the error. (History: 52-2-704, MCA; IMP, 52-2-702, 52-2-704, MCA; NEW, 2003 MAR p. 981, Eff. 5/9/03; AMD, 2006 MAR p. 331, Eff. 2/10/06.)

Rules 37.75.203 and 37.75.204 reserved

37.75.205 PROVIDER ENROLLMENT (1) A new provider must have a current, valid registration to provide child care in order to participate in the CACFP. An existing provider may be working toward renewal of its registration and participate in the CACFP if assurance is obtained from licensing staff that they are approved and the registration is forthcoming.

(2) Each sponsor must do the following when enrolling a new day care home for participation in the CACFP:

(a) unless (3) applies, obtain licensing verification in the form of:

(i) a current, valid copy of the provider's registration to provide child care;

(ii) written documentation from licensing staff indicating the provider has submitted all required information and has been approved for registration;

(iii) a screen print from the Child Care Under the Big Sky System (CCUBS), showing that the provider is registered and the effective date of the registration; or

(iv) a screen print from the virtual pavilion showing that the provider is registered and the effective dates of the registration; and

(b) obtain written preapproval for participating from the Montana CACFP prior to performing a preapproval visit, and perform a preapproval visit at the day care home prior to allowing the day care home to participate in the CACFP. During the preapproval visit, the sponsor must:

(i) discuss CACFP benefits and verify that the proposed food service does not exceed the capability of the day care home;

(ii) train the provider regarding CACFP duties and responsibilities; and

(iii) discuss record keeping and documentation requirements, including but not limited to posting menus, meals to be served, and attendance records.

(3) If a registered day care home is approved by the sponsor during the preapproval visit, the CACFP sponsor/provider agreement must be completed, reviewed, and signed by the provider and the sponsor's representative. The effective date to begin CACFP participation is the date the CACFP sponsor/provider agreement is signed by both the provider and the sponsor's representative.

- (4) If the location where care is provided by a day care home changes:
 - (a) the provider must notify the sponsor, and the provider may continue CACFP participation without interruption, provided:
 - (i) the sponsor performs a preapproval visit at the new address within 10 business days following the provider's first day of operation at the new location;
 - (ii) the new site is determined acceptable for CACFP participation; and
 - (iii) the new site is approved for child care by licensing staff;
 - (b) a Day Care Home Change in Information form must be completed and submitted to the sponsor; and
 - (c) the tier status of the home must be redetermined.
- (5) If a sponsor misdates any document in order to manipulate or circumvent a rule, the sponsor will be placed under corrective action.
- (6) A sponsor must not submit a claim for a provider who is not registered or in compliance with (2)(a).
- (7) A provider must retain on file for the current and preceding three federal fiscal years copies of:
 - (a) the signed applications and agreements; and
 - (b) the notification of reasons and procedures for termination.
- (8) A provider must retain the following information on file and have it readily available at the time of a review for the entire time the provider participates in the CACFP:
 - (a) a copy of the preapproval visit forms; and
 - (b) a copy of the current CACFP sponsor/provider agreement.
- (9) If a provider moves or changes its legal name, a new sponsor/provider agreement must be completed and marked "CHANGE."
- (10) If only meal times are changed, a Meal Time Change form must be completed and submitted to the sponsor with the current month's claim. Each Meal Time Change form becomes a part of the sponsor/provider agreement and is effective upon the date of receipt. (History: 52-2-704, MCA; IMP, 52-2-702, 52-2-704, MCA; NEW, 2003 MAR p. 981, Eff. 5/9/03; AMD, 2006 MAR p. 331, Eff. 2/10/06.)

37.75.206 RECRUITMENT (1) Day care home (DCH) sponsors are encouraged to recruit DCH providers to participate in the CACFP that are not currently participating and that have not participated in the CACFP through any sponsor within the last 30 days.

(2) A DCH sponsor may not recruit a provider that is participating in the CACFP under a current CACFP sponsor/provider agreement with any other DCH sponsor.

(3) A sponsor that the Montana CACFP determines has engaged in active recruitment as defined in ARM 37.75.101 will be subject to disciplinary action.

(4) Corrective action will include the following:

(a) Upon first violation, the Montana CACFP will issue a letter of warning to the sponsor stating that a recruiting violation has occurred, and the sponsor is required to complete a corrective action plan.

(b) Upon a second violation, the Montana CACFP will issue notice to the sponsor warning that a second recruiting violation has occurred and indicate that the sponsor must complete a corrective action plan; and

(i) The sponsor will be restricted to recruiting only new providers who are not currently participating in the CACFP; and

(ii) The sponsor may not accept any DCH providers that are changing sponsors or enroll a provider if the provider has participated in the CACFP within the preceding six months.

(c) If more than two violations occur, the department will issue written notice to the sponsor that a recruiting violation has occurred, written notice that it is seriously deficient and that, if the serious deficiency is not fully and permanently corrected, an intent to terminate will be issued. The number of DCH providers served by the sponsor will be capped for a minimum of one year, and the sponsor will not be allowed to enroll any new providers or providers changing sponsors without specific prior written approval from the Montana CACFP.

(5) Simultaneous active recruitment of multiple providers will be treated as a single violation.

(6) A corrective action for active recruitment will remain in effect from the date of violation for three years. Three years after the original violation, the violation cycle will start over, with the exception that, if a third recruiting violation occurs, the minimum one year cap on enrollment may continue into the following three year period. An example is:

- (a) an original violation occurs on November 1, 2006;
- (b) a third recruiting violation occurs on October 30, 2009; and
- (c) enrollment is capped from October 30, 2009 through October 30, 2010, extending into the following three year period.

(7) When a third recruiting violation occurs and enrollment is capped for one year for a period which spans two three year periods, the violation will count as the third violation in the previous three year period and will not count as the first violation in the next three year period. (History: 52-2-704, MCA; IMP, 52-2-702, 52-2-704, MCA; NEW, 2003 MAR p. 981, Eff. 5/9/03; AMD, 2006 MAR p. 331, Eff. 2/10/06.)

Rules 37.75.207 and 37.75.208 reserved

37.75.209 SPONSOR CHANGE BY PROVIDER (1) A provider may be enrolled with only one CACFP sponsor at a time while participating in the CACFP.

(2) Each sponsor must supply a copy of this rule to all providers upon their enrollment in the CACFP.

(3) Except as provided in (5), a participating day care home may change its CACFP sponsor according to these guidelines:

(a) A provider may change from one sponsor to another sponsor one time per year, the change to be effective the first day of the month following the notice provided in (3)(b). One time per year means once during any 12 month period.

(b) To change sponsors, a provider must notify its current sponsor in writing of its intention to change to another sponsor on or before the fifth working day of the month prior to the month in which the change to a new sponsor is to be effective. The current sponsor must submit a copy of the written notification to the department.

(4) A provider who fails to give timely notification to its sponsor, as required by (3)(b), will continue to be under the current sponsor until the first day of the following month.

(5) If a provider's current sponsor has requested information from the provider, is otherwise investigating the provider, or has notified the provider that corrective action is necessary, the provider may not change sponsors until the provider has been restored to good standing for a minimum of one calendar month.

(6) A sponsor is not obligated to sponsor any particular provider. (History: 52-2-704, MCA; IMP, 52-2-702, 52-2-704, MCA; NEW, 2003 MAR p. 981, Eff. 5/9/03; AMD, 2006 MAR p. 331, Eff. 2/10/06.)

Subchapter 3

Food Requirements

37.75.301 MENU EVALUATION (1) CACFP institutions and providers must ensure that all meals and snacks claimed for reimbursement meet all federal and state minimum standards in accordance with 7 CFR 226.20.

(2) Each DCH sponsor must annually evaluate the menus of each day care home participating in the CACFP through their sponsorship. The menu evaluation shall include a review of menus served over the course of at least one month.

(3) All institutions must monitor, verify, document, and ensure that only meals and snacks that meet federal regulations and state minimum standards are claimed for reimbursement. (History: 52-2-704, MCA; IMP, 52-2-702, 52-2-704, MCA; NEW, 2003 MAR p. 981, Eff. 5/9/03; AMD, 2006 MAR p. 331, Eff. 2/10/06.)

37.75.302 INFANT MEAL REIMBURSEMENT (1) All meal components required by the USDA infant meal pattern contained in 7 CFR 226.20 must be supplied by the provider or center, with the exception of breast milk, for a meal to be eligible for reimbursement.

(2) Except as provided in (6), meals containing breast milk served to infants may be claimed for reimbursement. Other required or optional meal components must be supplied by the provider or center. If the parent supplies any meal component other than breast milk, the meal may not be claimed for reimbursement.

(3) Meals containing only breast milk do not qualify for reimbursement if feeding is performed naturally by the mother.

(4) Except as provided in (6), infant formula must be supplied by the provider or center for the meal to be eligible for reimbursement. If parents provide infant formula, meals cannot be claimed.

(5) Except as provided in (6), a provider or center must supply an infant with iron-fortified formula or soy-based formula if recommended by the infant's parent or the infant's health care provider.

(6) If an infant requires a specialty formula such as Nutramigen, Pregestimil, Alimentum, and Lofenalac that is much more expensive or difficult to obtain than a regular infant formula, the provider or center may request that the parent pay the difference between a regular priced formula and the much higher priced formula. If the parents supply the specific formula, in lieu of receipt of cash, the provider or center may credit the parents for the value of the formula the provider or the center would have supplied. A written agreement signed by both the provider or center and the parents indicating how specialty formulas are to be provided must be kept and must be available for review by CACFP staff and auditors.

(7) Whole milk is not allowed as a meal component for an infant who is 12 months or less of age. (History: 52-2-704, MCA; IMP, 52-2-702, 52-2-704, MCA; NEW, 2003 MAR p. 981, Eff. 5/9/03; AMD, 2006 MAR p. 331, Eff. 2/10/06.)

37.75.303 COMBINATION FOODS (1) Each day care center and day care home shall list components of combination foods on menus as required by the Montana CACFP. Combination foods include, but are not limited to, the following:

- (a) chili (ground turkey/beans);
- (b) chicken casserole (chicken/rice/broccoli); and
- (c) tacos (soft tortilla/ground beef/cheese/lettuce, and tomato). The provider or center is responsible for ensuring that combination foods provide adequate amounts of the required meal components for the age group being served. (History: 52-2-704, MCA; IMP, 52-2-702, 52-2-704, MCA; NEW, 2003 MAR p. 981, Eff. 5/9/03; AMD, 2006 MAR p. 331, Eff. 2/10/06.)

Subchapter 4

Records

37.75.401 SPONSOR AND FACILITY TRAINING AND TRAINING RECORDS (1) A center must provide annual staff training on CACFP requirements, including those related to nutrition education, meal services, and food safety.

(2) Each institution must provide free training to each facility it sponsors under the CACFP. Initial training for each facility must occur before any meal or snack is served for which CACFP reimbursement is claimed.

(3) Training sessions must be provided at least annually for each facility.

(4) An institution must document each training session by keeping on file:

(a) an agenda which lists the date, time, topic, and location of the training;

(b) the names of the training facilitator or facilitators;

(c) a sign in sheet signed by each training session participant; or

(d) a copy of the certificate of completion for online training, signed by the sponsor's authorized representative.

(5) The following individuals must attend at least five hours per federal fiscal year of CACFP training provided by the department:

(a) one of the center's cooks; and

(b) the administrator, director, or nutrition coordinator.

(6) Each sponsor of day care homes must provide, free of charge, a minimum of four hours of training to the providers it sponsors concerning CACFP requirements, including those relating to nutrition education, meal service, and food safety. Two hours of the required training must cover CACFP administrative and regulatory issues. The training to be provided by the sponsor must be submitted to the department in a written training plan and must be approved by the department as part of its annual renewal packet and whenever the training content or method of providing the training changes. Sponsors shall provide the approved training frequently enough and in convenient locations so that providers have a reasonable opportunity to participate in the training.

(7) Each sponsor must retain on site all information relating to training provided by that sponsor for a period of at least the three prior federal fiscal years, plus the current federal fiscal year. (History: 52-2-704, MCA; IMP, 5-2-702, 52-2-704, MCA; NEW, 2003 MAR p. 981, Eff. 5/9/03; AMD, 2006 MAR p. 331, Eff. 2/10/06.)

37.75.402 MILK PURCHASE RECORDS (1) All reviews of centers performed by department staff and auditors under department contract will evaluate the milk purchase quantity documentation and compare it to the meals claimed that require a milk volume component.

(2) Notwithstanding any other applicable rule, if enough milk is not purchased and documented to meet the minimum meal component milk volume requirement, a corresponding meal reimbursement disallowance shall be made, in accordance with the milk volume requirements of 7 CFR 226.20. (History: 52-2-704, MCA; IMP, 52-2-702, 52-2-704, MCA; NEW, 2003 MAR p. 981, Eff. 5/9/03; AMD, 2006 MAR p. 331, Eff. 2/10/06.)

37.75.403 RECIPES REQUIRED (1) All program providers or centers must maintain documentation as to the creditability of baked goods as a bread/bread alternate.

(2) Each day care center or day care home shall maintain documentation of bread/bread alternate ingredients. Documentation may include a recipe, food label, or child nutrition (CN) label for the food item. This documentation is to be used to assess whether the primary ingredient (by weight) of the item is whole-grain and/or enriched flour and therefore creditable as a bread/bread alternate.

(3) Examples of recipes/food labels that should be kept on file include but are not limited to the following:

- (a) banana/carrot/zucchini bread;
- (b) brownies/bars;
- (c) cookies;
- (d) gingerbread; and
- (e) granola bars.

(4) It is the responsibility of the provider or center to ensure that all items claimed as bread/bread alternates meet the criteria listed in the grains/breads section of "Crediting Foods in Child and Adult Care Food Program." The August 2001 edition of "Crediting Foods in the Child and Adult Care Food Program" is hereby adopted and incorporated by this reference. A copy of the grains/breads section of "Crediting Foods in Child and Adult Care Food Program" is available from the Department of Public Health and Human Services, Human and Community Services Division, 111 N. Jackson, P.O. Box 202925, Helena, MT 59620-2925. (History: 52-2-704, MCA; IMP, 52-2-704, MCA; NEW, 2003 MAR p. 981, Eff. 5/9/03.)

Subchapter 5

Reviews

37.75.501 REVIEWS OF DAY CARE HOME SPONSORS (1) The department will conduct at least one review of each day care home sponsor during each period consisting of two federal fiscal years for sponsors with 100 or more homes. The department will conduct at least one review of each day care home sponsor during each period consisting of three federal fiscal years for a sponsor with fewer than 100 homes.

(2) The sponsor must ensure that all program records are available during any review. Program records include but are not limited to:

(a) documentation to substantiate that the procedures outlined in the sponsor's current management plan have been and are being followed; and

(b) documentation of claims processed and fiscal activity for the three preceding federal fiscal years, plus the current federal fiscal years. (History: 52-2-704, MCA; IMP, 52-2-702, 52-2-704, MCA; NEW, 2003 MAR p. 981, Eff. 5/9/03; AMD, 2006 MAR p. 331, Eff. 2/10/06.)

37.75.502 REVIEWS OF CENTERS AND SPONSORS OF CENTERS

(1) The department will conduct a minimum of one announced or unannounced review of each center or sponsor of centers in each three year period.

(2) Each institution must provide all CACFP records to the CACFP review team when the CACFP performs an announced or unannounced review. Records that must be on site and made available to the CACFP during a review include but are not limited to:

- (a) monthly attendance records and sign in/out sheets;
 - (b) food receipts, by month of purchase;
 - (c) food service labor documentation;
 - (d) menu plan and food production records;
 - (e) completed income eligibility forms;
 - (f) menus;
 - (g) milk receipts, by month of purchase;
 - (h) monthly financial reports;
 - (i) staff training records;
 - (j) records of facility training performed by the sponsor;
 - (k) monitoring procedures if a sponsor of centers;
 - (l) monitor training records if a sponsor of centers;
 - (m) a copy of the center's license, if the facility or institution is required to be licensed; and
 - (n) a copy of the health and fire inspection if the center is self-certified.
- (3) During an on site review, the CACFP will verify that:
- (a) the center is conducting a nonprofit food service;
 - (b) for profit institutions are eligible to claim reimbursement for meals served;
 - (c) meals offered and provided to CACFP participants are documented on menu plan and food production records that meet minimum food component and portion size requirements;
 - (d) completed CACFP income eligibility forms are on site or made available to the CACFP during a review to document that the center is claiming the correct rate of reimbursement for the meals being claimed; and
 - (e) records are satisfactorily completed to demonstrate which children and meals are claimed each day by each center or sponsored facility.

(4) If a center or sponsor of centers submits a claim for reimbursement for any month, and does not have complete records on site during a review or make records available to the CACFP during a review, the following actions may be taken:

(a) meal reimbursement for the corresponding claim month may be disallowed;

(b) the amount of reimbursement for disallowed meals, as stated in a notice of overclaim from the CACFP, must be paid back to the CACFP;

(c) the meal disallowance total, as stated in a notice of action from the CACFP, is subject to an administrative review (appeal); and

(d) records that are not on site or made available during a review will not be considered by the CACFP when establishing the dollar amount for disallowed meals. An exception may be requested in writing by the institution and must be approved in writing by the CACFP.

(5) When meals are disallowed and an overclaim notice is received by an institution, the institution may request an exception to have records reviewed that were not on site or made available to the CACFP at the time of a review. The request must be submitted to the CACFP within 15 days of receipt of an overclaim notice.

(6) The CACFP will notify the institution of its decision to grant or deny an exception within 15 days of receipt of the request for an exception.

(a) All misclassified income eligibility forms must be corrected back to the date of the signature of the adult household member on the forms.

(7) Exceptions may be granted only for extreme circumstances, such as the accidental destruction of records, and solely at the discretion of the CACFP.

(8) Reimbursement for claims submitted after the date of review may be delayed up to 45 days from receipt of a complete and valid claim if the institution owes money to the CACFP.

(9) Additional corrective actions may be required as a result of missing records. The CACFP may request copies of various records for random months throughout the year to demonstrate compliance with those items as stated in (2), (3), and (4). (History: 52-2-704, MCA; IMP, 52-2-702, 52-2-704, MCA; NEW, 2003 MAR p. 981, Eff. 5/9/03; AMD, 2006 MAR p. 331, Eff. 2/10/06.)

Subchapter 6

Enforcement

37.75.601 ADMINISTRATIVE REVIEWS (APPEALS) AND FAIR HEARINGS

(1) Except as provided in (3), an institution may appeal an adverse administrative action through the department's Office of Fair Hearings pursuant to the procedures provided in ARM Title 37, chapter 5. Adverse administrative actions include:

- (a) denial of the institution's application for participation;
- (b) denial of an application submitted by a sponsor of centers on behalf of a facility;
- (c) termination or suspension of an institution from participation in CACFP;
- (d) denial of an institution's application for start up funds;
- (e) denial of an institution's application for advance payment;
- (f) denial of all or part of an institution's claim for reimbursement, provided the claim was submitted in a timely manner;
- (g) denial by the state agency to forward to Food and Nutrition Services (FNS) of the USDA an exception request by the institution for payment of a late claim or a request for an upward adjustment to a claim; or
- (h) demand for the remittance of an overpayment against an institution.

(2) An institution must file a written request for an administrative review (appeal) within 15 calendar days of receiving notification of an adverse administrative action by providing the written request to the Department of Public Health and Human Services, Quality Assurance Division, Office of Fair Hearings, 2401 Colonial Drive, P.O. Box 202953, Helena MT 59620-2953.

(3) A day care home may only participate in the CACFP through a sponsor. A participating day care home may appeal through the department's Office of Fair Hearings when there is a determination to terminate the home's participation in the CACFP. All other adverse administrative actions taken against a day care home must be reviewed through the sponsor's internal review process.

(4) Decisions made by FNS pertaining to requests for exceptions to the claims submission deadlines are not subject to appeal through the state's administrative review (appeal) process. (History: 52-2-704, MCA; IMP, 52-2-702, 52-2-704, MCA; NEW, 2003 MAR p. 981, Eff. 5/9/03; AMD, 2006 MAR p. 331, Eff. 2/10/06.)

37.75.602 CORRECTIVE ACTION PLAN (1) An institution receiving notice that it is deficient in some aspect of the CACFP shall submit to the department a corrective action plan to correct the deficiency. The plan must be postmarked within 30 days of receipt of the deficiency notice provided by the department, or within such other timeframe as is set forth in the deficiency notice. Any institution that fails to submit a timely corrective action plan will be determined to be seriously deficient, or if the original notice stated the institution was seriously deficient, the institution may be subject to termination in accordance with the provisions set forth in 7 CFR 226.6.

(2) All corrective action plans are subject to review and approval by the department. If a corrective action plan is rejected by the department, a revised corrective action plan that addresses the deficiencies in the original plan must be submitted to the department no later than 15 calendar days from the date of receipt of the notice of rejection of the original plan. Any institution that fails to submit an amended corrective action plan within 15 calendar days of the receipt of the notice from the department shall be determined seriously deficient, and will be subject to termination from the program. (History: 52-2-704, MCA; IMP, 52-2-702, 52-2-704, MCA; NEW, 2003 MAR p. 981, Eff. 5/9/03; AMD, 2006 MAR p. 331, Eff. 2/10/06.)

37.75.603 TERMINATION AND RE-ENROLLMENT OF A DAY CARE HOME PROVIDER (1) When a sponsor terminates a day care home provider for cause, the sponsor must send to the department a copy of the termination letter that is sent to the provider. Upon receipt of this notification, the terminated provider's name will be added to the state list of terminated providers, sent to all day care home sponsors, and included on the national disqualified list.

(2) If a terminated provider wants to return to program participation, the provider must demonstrate to the satisfaction of the Montana CACFP that they have fully and permanently corrected the serious deficiency.

(3) An institution or provider terminating operations with the CACFP while under corrective action will still be placed on the national disqualified list as well as the state disqualified list. (History: 52-2-704, MCA; IMP, 52-2-702, 52-2-704, MCA; NEW, 2003 MAR p. 981, Eff. 5/9/03; AMD, 2006 MAR p. 331, Eff. 2/10/06.)